CERTIFICATE OF DIVISION.

SUPREME COURT OF THE UNITED STATES.

No. ~~176.~~ ~~236~~ 145

THE UNITED STATES, PLAINTIFFS,

vs.

E. B. ISHAM.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED DECEMBER 5, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 476.

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vs.

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1 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

At the circuit court of the United States, begun and held at Detroit, for the eastern district of Michigan, on Tuesday the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-one, and in the ninety-sixth year of American independence—

Present, Honorable Holmer H. Emmons, circuit judge, and Honorable John W. Longyear, district judge.

THE UNITED STATES OF AMERICA
vs.
EDWIN B. ISHAM.

This is a criminal information, filed by the United States district attorney, in the words and figures, following:

2 UNITED STATES OF AMERICA,
Eastern District of Michigan, to wit:

Be it remembered that, at a term of the district court of the United States for the eastern district of Michigan, begun and held at Detroit, in the said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and seventy, A. B. Maynard, esq., district attorney of the United States for the district aforesaid, who, in this behalf, prosecuteth in the name of the United States, and for the said United States, comes here into the said court on this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and seventy-one, being one of the days of said term, in his own proper person, and for the said United States gives the said court here to understand and be informed that, heretofore, to wit, on the third day of January, in the year of our Lord one thousand eight hundred and seventy, at Negaunee, Michigan, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Edwin B. Isham being then and there superintendent of the Iron Cliffs Company, in said eastern district of Michigan, as such superintendent, did make, sign, and issue a certain written and printed evidence of an amount of money to be paid on demand which was in the form of a draft drawn upon Charles J. Canda, treasurer of said company, requesting him, said Canda, to pay to the order of said Isham or bearer, a certain sum of money, which said draft is hereto attached and forms a part of this information, upon which a tax is imposed by law, without the same being duly stamped or having thereon the adhesive stamp required by law for denoting the tax chargeable thereon, with intent to evade the provisions of the act of Congress relating to internal revenue, as amended by the act approved July 13, 1866, against the form, force, and effect of said acts, and against the peace and dignity of the United States.

And the district attorney aforesaid, on behalf of the United States, gives the said court further to understand and be informed that, heretofore, to wit, on the third day of January, in the year of our Lord one thousand eight hundred and seventy, at Negaunee, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Edwin B. Isham, then and there being superintendent of the Iron Cliffs Company, as such superintendent aforesaid, did sign a certain

written and printed evidence of an amount of money to be paid on demand, which was in the form of a draft drawn upon Charles J. Canda, esq., treasurer of said company, requesting him, said Canda, to pay to the order of said Isham or bearer, a sum of money, which said draft is hereto attached and forms a part of this information, upon which tax is imposed by law, without the same being duly stamped or having thereon the adhesive stamp required by law for denoting the tax chargeable thereon, with intent to evade the provisions of the acts of Congress relating to internal revenue, as amended by the act approved July 13, 1866, against the form, force, and effect of said acts, and against the peace and dignity of the United States.

And the district attorney aforesaid, on behalf of the said United States, gives the said court further to understand and be informed that, heretofore, to wit, on the third day of January, in the year of our Lord one thousand eight hundred and seventy, at Negaunee, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Edwin B. Isham, being then and there superintendent of the Iron Cliffs Company, as such superintendent, did make, sign, and issue a certain instrument in the form of a draft, drawn upon Charles J. Canda, treasurer of said company, requesting him, said Canda, to pay to the order of said Isham or bearer, a sum of money on demand, which said draft is hereto attached and forms a part of this information, upon which said instrument a tax is imposed by law, without the same being duly stamped or having thereon the adhesive stamp required by law for denoting the tax chargeable thereon, with intent to evade the provissions of the acts of Congress in relation to internal revenue, as amended by the act approved July 13, 1866, against the form, force, and effect of said acts, and against the peace and dignity of the United States.

And the district attorney aforesaid, on behalf of the said United States, gives the said court further to understand and be informed that, heretofore, to wit, on the third day of January, in the year of our Lord one thousand eight hundred and seventy, at Negaunee, in the eastern district of Michigan, and within the jurisdiction of this honorable court, one Edwin B. Isham, being then and there superintendent of the Iron Cliffs Company, as such superintendent aforesaid, did sign a certain instrument in the form of a draft, drawn upon Charles J. Canda, esq., treasurer of said company, requesting him, said Canda, to pay to the order of said Isham or bearer, a sum of money on demand, which said draft is hereto attached and forms part of this information, upon which a tax is imposed by law, without the same being duly stamped or having thereon the adhesive stamp required by law for denoting the tax chargeable thereon, with intent to evade the provisions of the acts of Congress in relation to internal revenue, as amended by the act approved July 13, 1866, against the form, force, and effect of said acts, against the peace and dignity of the United States.

Whereupon the said district attorney, in behalf of the United States, prayeth the consideration of the court here in the prem'ses, and that due process of law may be awarded against him, the said Edwin B. Isham, in this behalf, to make his answer to the United States, touching and concerning the premises aforesaid.

A. B. MAYNARD,
U. S. District Attorney for the Eastern District of Michigan.

5] IRON CLIFFS COMPANY. [FIVE

1190] NEGAUNEE, MICH., *Jan. 3rd*, 1870.

Pay to the order of E. B. Isham, sup't, or bearer,

FIVE DOLLARS,

Value received, and charge to account of

E. B. ISHAM.

To CHARLES J. CANDA, Esq., *New York.*

Countersigned:

E. S. GREEN, *Clerk.*

[Henry Seibert & Bros., Ledger building, cor. William & Spruce st., N. Y.]

THE UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

In the district court of the United States for the eastern district of Michigan, of the term, A. D. 187 .

THE UNITED STATES }
vs. }

And now comes the said defendant , on this day of , in the year of our Lord one thousand eight hundred and seventy-one, and, waiving process for plea to the within information, says (the district attorney of the United States for the eastern district of Michigan consenting thereto) that he will not contend with the United States, and pray the favorable consideration of the court in the premises.

, *Defendant.*

Witness:

(Indorsed:) U. S. district court, eastern district of Michigan. United States vs. . Information for issuing unstamped instruments. Filed , 1871. Witnesses: A. B. Maynard, U. S. attorney.

3 The defendant, being arraigned, pleaded not guilty, and thereupon a jury was duly sworn, and the following testimony was introduced, all being on the part of the prosecution, and was received subject to proper objection on the part of the defendant, to wit:

WILLIAM ROLAND.

The Iron Cliff Company is located at Negaunee, in Marquette County, Michigan, and is engaged in the business of mining iron-ore, and in manufacturing pig-iron. It is a corporation organized under the laws of Michigan. It has an office at Negaunee, where its business is carried on. Its mining and manufacturing products are all shipped from Lake Superior, and sold in southern or eastern markets. It has a head office in New York, where its board of directors meet, and its funds are kept. Edwin B. Isham is superintendent of the works at Negaunee, where he

resides, and has been, since some time prior to 1868. Charles J. Canda is, and has been since that date, treasurer of the company, and resides in New York. I am book-keeper for the company at Negaunee, and have been for upwards of three years past. I have been in the employ of the company for upwards of five years. The company was
4 interested in a store or mercantile establishment carried on at Negaunee, in connection with the mining and manufacturing business. The signature of the draft or order annexed to the information in this case, is the handwriting of Edwin B. Isham. The Iron Cliff Company has been in the practice of issuing this kind of paper in payment for labor or other debts due at the mine since January, 1868, since that time nearly all payments of balances due for labor have been made in this kind of paper. The amount issued annually since that time has been about $100,000 00. The blanks were sent to Mr. Isham from New York, and signed by him as drawn. The denominations issued were of one, two, three, five, and ten dollars each. When this kind of paper was issued, it, to some extent, went into circulation, and answered the purpose of a local currency. It was taken at the store in which the company was interested in payment for goods, and paid out again in the way of making change, but not otherwise. It was taken by all the banks and banking-houses in that region, and sometimes paid out by them on checks. But when in the course of business it came into the hands of a bank or banker, or a merchant, it was generally retained until a considerable amount of it was on hand—say from $1,000 to $2,000—and then either sent to New York by express
5 for redemption, or Mr. Isham took it up and gave to the holder a draft on New York for the amount. When Mr. Isham took this paper in this way, by giving the holder a large draft for it, he frequently re-issued it, or paid it out again in the course of the company's business at the mine; but when it was finally paid in New York, it was cancelled and destroyed. The company had an account at the mine with the Bank of Negaunee. When this kind of paper having been once issued in payment for labor, came back into the hands of the superintendent in the manner stated, without having been redeemed in New York, it was frequently deposited with money, and other like papers issued by other companies, the whole being credited as cash; and the bank sometimes paid it out again on the checks of the company with money and other paper of the same kind, though the company never checked for this particular kind of paper.

Cross-examination:

It is nearly four years since the company began to issue this paper. I have been with the company nearly five years—ever since its formation. This kind of paper, issued by other companies, was also in circulation. Most of this kind of paper in circulation at one time, was that issued by other companies. Other companies, among the Lake
6 Superior Iron Company, the Cleveland, Jackson, Pittsburgh, and , and I think the Michigan, issued this kind of paper before our company did, and were issuing it when this Iron Cliff Company started. There were not, I think, any banks or banking companies in that region of country, that issued circulating notes of their own, except the national banks. There was the First National Bank of Marquette; I do not know its capital. The ore and pig-iron manufactured was shipped to Chicago, Cleveland, and other points.

When the Iron Cliff Company began to issue this paper, there were hardly any facilities for getting currency into the country with which

to pay men, except taking it around Green Bay by stage. There were 120 miles of staging, nearly the whole distance through a wilderness. This continues to be the case yet. When the company started, a daily stage came over this route, and has ever since. It takes two and one-half days to come through from Green Bay to Negaunee—two days by stage and half a day by railroad. I should not think it safe to transport funds by this route in the winter season; there would be great danger of robbery.

The greater part of the paper in circulation during the last four or five years in the mining region has been of the kind in question, issued by the different companies. There is but very little in circulation
7 at the present time. It has gone out of circulation during the last year, but our company is still using it. This kind of paper was used because of necessity. Since it has been done away with to a great extent, there is a great scarcity of currency in the country.

There is no limitation imposed or request made, to my knowledge, by the company or Mr. Isham that this paper shall be kept in circulation, not to be returned immediately to New York. No effort was made by the company to keep it in circulation, or to prevent its going immediately to New York, but it was sent there as soon as the holder wished to convert it into money.

H. G. SMITH.

I live in Marquette, and am in the banking business—being connected with the Citizens' Bank, of that place. I have been in business at Marquette since the 1st of May, 1871; have resided there between seven and eight years. I was engaged in practicing law before entering the banking business. I know the Iron Cliffs Company, and have seen this paper of theirs in circulation, of the denominations, ones, twos, threes, fives and tens, for a year or more. I don't recollect when I first saw it. It has been in pretty general circulation, I think. I have taken it at our bank. We have generally sent what we received to the Negaunee
8 office, and got large drafts for it on New York, from Mr. Isham, the superintendent. We have sent it in quantities of not less than a thousand dollars, from that sum to twenty-five hundred dollars, I think. We have sent over five thousand dollars of it. We have paid it out over our counter, but I cannot say to what amount. We have used some of it several times over. I cannot say whether we have or have not received $50,000 since we commenced business.

The Collins Iron Company's paper, similar to this, has also been in circulation. We have received that in considerably larger sums than the drafts issued by the Iron Cliffs Company. It would be a very difficult thing to give an estimate as to how much of it has been in circulation; we receive more than of the paper of other companies. We paid it out.

Cross-examined:

There were other mining companies who were issuing the same kind of paper, which circulated in the same way. These were the Pittsburgh and Lake Angeline, Lake Superior, Cleveland, Jackson, and Michigan iron companies. All these companies had had offices in some eastern city; Cleveland, Boston, Buffalo, or New York, where their funds were kept. The drafts were drawn on their main offices or on the places where their main offices were kept. At the present time only a very small proportion of the circulation of the Marquette region consists
9 of this kind of paper. A few years ago it constituted a large pro-

portion of the circulating medium. It seemed impossible to get anything else. In the winter season it was especially very difficult coming around Green Bay, and took a long time. If a company had wanted to use a very large amount of money it would have been very difficult to get it by that route. Circumstances have changed, but at the present time it is very difficult to get money sufficient for the companies at any one time to pay off men without using some of this kind of paper.

The transportation at an early day over the road around Green Bay of large amounts of money was, I should think, hazardous. No considerable amounts of currency were received by that route during the winter season so far as I know. The First National Bank was the only bank of issue in Marquette County. Its capital is now $200,000. It originally started with $50,000, I think. Our own bank is a private institution; we do not issue any notes.

The only other bank of issue in the Upper Peninsula is one at Houghton, a national bank. The facilities have greatly increased during the last three or four years for getting currency into the country. There has been no regular express on the boat in the summer time, as I have understood. I have never made use of it.

Re-direct examination:

10 I think it is about two or three years since the road was made around Green Bay. That has been better; and there has been a better organized stage line. Frequently it is possible to go over Green Bay upon the ice. The conveyance was only by private teams formerly; now, there are better conveniences; the stages run daily, and the travel has increased greatly the last two or three winters, which makes the route safer.

Ques. What were the special hazards there, three or four years ago, in getting funds backward and forward during the winter?

Ans. I suppose, if it had been generally known that money in considerable quantities was transported there would have been danger of robbery. I don't know that robberies have been common on this route. I do not understand that the danger of carrying currency in the winter, lest parties should be robbed, is the sole reason we leave it there.

Ques. Do you suppose the danger of robbery had anything to do with the scarcity of currency there?

Ans. There are other inconveniences in connection with transporting currency over the route. The time would be one thing.

Ques. If these companies had any other means to pay their debts, even in Detroit, or anywhere else, there would be no trouble in getting it there to make the payments?

11 Ans. Not at present.

Ques. Would there, at that time, have been any difficulty, except simply the time it takes to send it there?

Ans. I apprehend there would, years ago, for I have heard parties say they carried money each way, and felt in great danger; they did not like to do it; it was a great risk.

Re-cross:

Ques. You stated you wanted to explain something.

Ans. I made the statement that I had heard parties express great fear in carrying money, that they carried it through, but did not like to do it.

Ques. What was the condition of things that made it dangerous?

Ans. There were miles that were wilderness—not a settlement or person; and it is only within a few years that there has been a road cut at all. Travelers went along the shore. If it was known that there was money men could easily conceal themselves where there was no opportunity to get assistance.

Ques. Do you know, as a matter of fact, whether, during that time, there was much money lost, considering the amount of business transported over that road?

Ans. I don't think there was a great deal.

12 EDWARD B. GAY.

I reside at Marquette, and am cashier of the Marquette and Ontonogon Railroad. I have seen this kind of paper of the Iron Cliffs Company frequently in circulation. I have been cashier of said railroad four years. I have seen this kind of paper in circulation about four years—in denominations of ones, twos, threes, fives, and tens. It is unstamped. It has been in general circulation. It is taken in at our road for freight bills, and for all other purposes.

Ques. What do you do with it?

Ans. Pay it out as currency. This has been our practice ever since the road was built—about fifteen years. This Iron Cliffs Company's money has been so used ever since it came into circulation. Years ago, paper like this issued by mining companies was about the only currency you would see. This was the main currency of that country fourteen or fifteen years ago. It was all I ever saw; once in a while you would see an old State bill. I was then located at Marquette; never lived elsewhere on Lake Superior. My memory does not go back more than fifteen years in respect to this money.

WALTER PHINNEY.

I reside at Marquette, and am engaged in the internal revenue
13 department. I am also general passenger agent of the Marquette and Ontonogon Railroad Company at that place. I have been there twelve years. I have seen some of the small drafts or orders issued by the Iron Cliffs Company in circulation—of denominations of ones, twos, threes, fives, and tens. It has been in general circulation two or three years past. It is taken on our road for passage money.

Ques. What do you do with it?

Ans. Make remittances to the general office of our company at Marquette. There it is used and paid out. Their pay-roll is large, and they use a great deal of money monthly. This particular kind of paper has been in circulation pretty generally for the last three years.

Cross-examined:

Iron currency, I guess, was the predominant circulating medium in Marquette County,—or it was iron and State banks of the United States until three years ago—and constitutes a portion of it now. It began to go out of circulation, I think, about three years ago. One or two of the companies stopped issuing it, and they have been redeeming it since.

Ques. When you heard that one or two prosecutions had been
14 commenced, and this stamp question had again come up, did it not diminish pretty rapidly?

Ans. I think it did before.

PETER WHITE.

I reside at Marquette, in the Upper Peninsula of Michigan, and have resided there 23 years.

Ques. What business are you in now?

Ans. Twenty different kinds.

Ques. Name some of them.

Ans. Banker; I am in the National Bank of Marquette. I have been quite actively engaged there in business a good many years; have been engaged in banking sixteen years. I am acquainted with a company there called the Iron Cliffs Company.

(On being shown the draft or order annexed to the information, witness testified:)

Paper of this kind purporting to be issued by the Iron Cliffs Company has been used generally in circulation in Marquette County for about three years, but not as generally as that of other companies. This paper is received at our bank; we take it from customers; we do not pay it out, but either take it to the company for redemption or send it forward to New York. I have paid it out individually in some cases,
15 but not the bank. I carry on a good many other kinds of business besides banking; when this paper accumulates at our bank we send it forward to New York as a general thing. We do that in the case of that particular company; ninety-nine times out of a hundred we put it in a package when it gets to a sum sufficient to send to New York. The first year the company issued this kind of paper we frequently gave it to the superintendent at the mines, and received in exchange a large draft for the amount of it; but the last two years we have not done so. We suffer it to accumulate before we send it forward until we get about $1,000, then send it forward. Sometimes we would not get a thousand dollars of it in two weeks; at other times it would come in one day. I should think it would average about a thousand dollars a week; possibly that is too high. There are different denominations of the paper of this kind issued by the Iron Cliff Company—ones, twos, fives, and tens. I did not know there were threes until I heard the testimony of Mr. Roland. I never saw any stamps on those drafts. This paper was generally received and paid out in Marquette County. By some people it is considered better than national currency. The miners gen-
16 erally look upon the stability of the mines as greater than that of the United States, or any of the banks, and, then, there is no danger of counterfeits.

Cross-examined:

The paper redeemed by Mr. Isham, the superintendent, was redeemed by giving time drafts for it upon such time as we could agree upon—10 days to 90; we collected it at the bank, sent it forward for the purpose of exchange on New York.

Ques. How long since the issue of this kind of paper by mining companies in the Lake Superior region was commenced?

Ans. My earliest knowledge of the issue of this kind of paper by the Lake Superior mining companies, was in 1852. The iron mining commenced at this time. The copper-mining companies commenced issuing it, I think, very soon after that; at an early day there was no express company—no such thing as sending money by express—along in 1852, and two or three years after that, and the mining companies usually paid their men with drafts on Cleveland, Pittsburgh, New York, Boston, and Chicago, in large sums, and the men would have to submit to a shave, or go down themselves; or, if they took a draft to a store,
17 they would have to trade it all out at that particular store; that was a loss to them, and it came to the point that they would not take large drafts; then it was difficult for the companies doing a large busi-

ness to get currency enough in the fall to last them until spring, and this was an expedient to accomodate the men more than the companies; they first commenced issuing two dollar and a half drafts, then changed to fives; for many years there were only two and a halfs, fives, and tens—no larger or smaller ones; it is only within the last five years that any ones, or twos, or threes, have been issued; for a long time mining companies only issued fives and tens, and one or two companies issued two and a half bills. A few mining companies have not issued this kind of paper, but have availed themselves of the chances of getting it after it had been put into circulation by other companies; they have all used it, that I know anything about, by getting it on drafts for their iron shipped. The proportion of the circulation in common use composed of these orders has varied at different times—in the entire time, about three-quarters of the whole circulation was composed of
18 these orders—say from 1852 to 1857 or 1858; the other quarter was old State currency; State bank money went out of use; the proportion varied; new and richer companies came in and brought their own currency; some companies, for years, would not adopt this system of issuing drafts or orders, but would bring their currency. The Iron Cliffs Company, for three or four years, possibly—commencing, perhaps with 1863, up to 1866 or 1867, would not touch this kind of paper—it did business with me—it kept an account with me, but would come and give me drafts on New York for national currency, paying me the difference in value between that and iron money, as we call it, and pay its men, and would not allow any of its employees to receive any of this kind of paper; but sooner or later, every company came to it, when they found the difficulty of getting enough national currency up in one season to meet their wants. In 1867 & 1868—first years of business of the Iron Cliffs Company, it was very particular and would not receive one dollar; if it wanted $17,000 to pay its men, it would not receive $100 of what were called iron drafts; they were all new comers from New York, and looked with a good deal of contempt upon this kind of paper. The business of the country was very large at first, and it has grown to be enormous since; the products are pig-iron,
19 iron-ore and copper; these products were sold in Cleveland, Pittsburgh, Boston, New York, and other cities east, and owing to the cost of raising the money in such large sums as was necessary, this expedient was adopted to meet it; the sales agents could borrow money from day to day and week to week, sufficient to meet these drafts; whereas, if any person had tried to borrow money in one lump to take up there, he could not do it, owing to the stringency of the money market; but at most periods of the year, in the early days, some of the drafts or orders issued were at three days' sight, and some at ten days sight; and latterly—for the last five or six years—all have been at sight or on demand There would have been great practical difficulty in taking into the country in the winter season, the amount of currency that was required for the payment of laborers and the transaction of business that the company was engaged in; there was great difficulty even in the summer time; no express company that ran up there by the lake boats would receive any money after the first day of November to carry, at any price whatever; and even in the summer time, their charges amount to a half per cent. on the money; they considered the risk very great; a good many boats had been lost and the money
20 lost with the boats, and the express company paid it; it was considered a very precarious route. Afterwards, when the mail route was established, by way of Escona'ba and Green Bay, it was con-

sidered very unsafe. The first two years it went by way of Jena and Masonville; there were two or three days staging; mud two or three feet deep nearly all the year—certainly, for two or three months in the spring, and in the fall two or three months; and in the winter there were very deep snows. From Jena to Masonville was nearly 150 miles, and nearly the whole way inhabited only by lumbermen, composed of all nationalities; from 40 to 100 lumbermen in a camp; no farmers, but one or two merchants at each of the lumber stations; it was considered very unsafe to take currency, or anything valuable that way. And then to Escona'ba, until the last two years, there has been no road through the woods; we went on the ice from Green Bay, and it was no uncommon thing for the horses and the mail to go under and never come up again; I have been through the ice seven times between Escanaba and Green Bay; I jumped out and ran; I had large sums of currency with me, and I saved it. I have been unable to get currency; the express company would not carry it, and I have made trips to Chicago and Detroit for it, and have taken it back with me in large quantities with
21 fear and trembling all the way; I have taken it out of my valise and put it in the bed, and thrown the valise down at the door. One morning I found my valise broken open, These lumbering stations were all along the Escona'ba River. We went first from Green Bay to Escona'ba, and then went up the Escona'ba River to Marquette. There are different lumbering places along there. At one time I was register of the United States Land Office, and had seized a lot of timber and sent some men to sell it, by special appointment from the General Land Office, and these men marshaled themselves in red shirts and frightened my men off, so they did not take the timber. There were two or three attempts made to seize timber taken from Government lands, but it could not be effected, owing to the numbers and disposition of the men in that region. There are now two steamers running, that make daily trips from Green Bay during the season of navigation; but in the winter the express goes every other day by stage from Green Bay to Escona'ba, and from there by rail to Marquette. There is a great deal of currency carried over that route now, but the amount required monthly is not less than $250,000, which is paid out in Marquette County, and half that money was car-
22 ried 150 miles over a road where there are few inhabitants. I consider it very dangerous indeed. I have had $80,000 in a valise, and I did not sleep a wink for three nights going over the road. I have taken into the country by express, and by carrying it myself, in the neighborhood of $500,000 to $1,000,000 a year. It made no great difference in the amount of iron currency. My contract with the express company has been for $400,000 a year for the last two years, and I have a little more than double that in national currency and Government greenbacks. There are only two issuing and circulating banks in the Lake Superior country, one at Houghton and the other at Marquette. The First National Bank of Marquette has $55,000 circulation, and that of Houghton $140,000 or $150,000. I have not seen a bill of the First National Bank of Marquette for three years, except those paid out to supply that which is mutilated. The route from Marquette to Green Bay is not perfectly secure now. I send over annually $10,000 at a time, and the manager of the express has requested me to send over $15,000 at one time, saying the risk was too great. He told me the rates which they received were inadequate compared with the risk. Where currency goes from Chicago to New Orleans or New York, it is 40 cents a thousand. My bank pays $1 50 against that 40 cents, and

an outsider who has no contract pays $4 to $4½—nearly one-
23 half per cent. This difference in these charges shows their view of the danger of the route. Since the facilities have increased, this iron circulation has diminished. The larger companies, like the Jackson, Lake Superior, and Cleveland, have made a practice of issuing perhaps one half to three-fourths of national currency, and they fill up the balance of what their pay rolls require by paying this iron money, so that there is very much less of it now—in fact, for the last three years the larger companies have almost ceased issuing it, and in the last two years they have ceased entirely. I don't think I have seen one the last year and a half of those companies. The other companies have perhaps increased theirs in volume during that time. When they first began they issued for just the balance due. If they owed a man $40, they gave him a draft for that amount. He would go to the store, and he would have to leave the draft and trade the whole amount out there, or get an order or due bill from that store upon some other store. In fact, the merchants first commenced this. They put out this circulation in that shape. They would make a man pay cash for groceries, and take their iron paper for dry goods. This commenced as early as 1850. As soon as the companies commenced to do it, the men immediately tabooed the merchants' issue, and would not touch it any more.
24 There was a period during the war that men who had greenbacks or national bank circulation exchanged them for the iron money, considering that safer. Some were willing to pay a premium and get the iron money for their national bills. In 1862 and 1863, while I was engaged in private banking, an Irishman would not take a national bill—did not like the looks of it. In one case a mail contractor, quite a prominent man, came to me and refused to receive national bills on his post office draft for carrying the mails. I think it was a draft on the sub-treasurer in New York. He insisted in endorsing it without recourse.

Ques. Do you know generally what extent of circulation those companies have had?

Ans. I don't know to a certainty the extent of the circulation. I know that most of it goes forward rapidly. Some of the companies complain that it forwarded too rapidly for them. There is a great temptation for the bankers to send it forward rapidly, so that they can sell drafts against it, for which they can get ½ per cent. There was less risk in sending it than in sending currency, because you could take the numbers of the drafts and endorse them so that if they were lost they could be replaced, whereas currency, if lost, could not be. The same motive operated to induce the merchants and business men to send this paper forward for redemption. On two occasions I
25 have lost considerable amounts by the going down of steamers—had $2,600 on the "City of Cleveland" when she went down in Lake Erie, and they were replaced. Have in numerous instances lost them when sent by mail. I do not think the issuing of these small drafts was a source of profit to the companies. It was not so in the case of those I knew anything about, and I was a director in one or two of them, and interested in several. They did not remain in circulation long enough to enable the companies to make much in the way of interest, and they cost, according to their quality, from 3 to 7 cents each. Some of the companies, I believe, are out of pocket by their issue. Others may have made a very little, but not more than enough to pay the cost of the drafts. Not a dollar of these drafts would be issued if they required to be stamped.

Ques. You say if the companies were compelled to stamp these drafts not a dollar of them would be issued.

Ans. No, sir.

Ques. How would the company carry on business without them?

Ans. They would get currency or issue large drafts, and compel the men to take them. A draft of $1, with a five cent stamp on it, the stamp would be a half year's interest at the highest legal rate, and the draft would, perhaps, be a week or ten days in going to New
26 York. Even if the draft should circulate eight or ten months, it would be a pretty high rate if the cost of the blanks, clerk hire, &c., are added.

Ques. Does not the statement of Mr. Roland, that the Iron Cliffs Company issued $90,000 per year, and paid out $20,000 a month, show that the drafts were a long time in circulation?

Ans. Mr. Roland did not so testify. He explained this matter to me after he left the stand.

Ques. Suppose that was the fact?

Ans. I know the fact to be different. If such were the fact it would indicate that a portion of the drafts remained some time in circulation. The danger of taking money overland from Green Bay, which I have said existed in early times, has lessened very little.

Ques. Did you know of the company's suffering any loss in transporting money over this route?

Ans. I don't think they carried any. I have carried $80,000 through at one time. I never was robbed. There are express companies over this route every other day in the winter; on the lakes every day in summer. There is no difficulty in getting money carried by the express companies in summer now; but there is some in the winter. It requires $250,000 per month in Marquette County alone, and in our distant and isolated position it is difficult to get so much money.

27 Ques. You mean to say the business is so large it cannot be carried on without credit?

Ans. That is partly it.

Ques. This paper is issued by way of obtaining credit?

Ans. It is simply a credit in transitu.

Question repeated.

Ans. They do, with this explanation.

Ques. They have to use credit like other men who do business beyond their means in paying their men?

Ans. Yes, sir; but this is not beyond their means. They draw against the iron. Here there are numerous banks near by to borrow from.

Ques. Then the case is that there are not the same conveniences for borrowing money there that there are here?

Ans. That is one of the difficulties. The express difficulty and danger of carrying money is another.

Ques. The express charges, you mean?

Ans. The charge is one thing, and the difficulty of getting the money transported is another.

Ques. You say you was informed in 1865 that these drafts were not subject to stamp?

Ans. Yes, sir.

Ques. Were you not afterwards notified that the Government claimed they were liable to be stamped?

Ans. My first intimation to that effect was in the fall of 1868,
28 I think. I was in New York or Boston, and I received a telegram that the U. S. marshal was in Marquette, and had arrested the

agents of all the mining companies. Some of the companies stopped issuing these drafts on that intimation in 1868.

Re-examination:

These drafts, when presented at their place of payment, have always been paid, so far as I know; and nothing has been done, that I know of, to prevent their being sent forward and presented for payment.

(It was admitted that Mr. Isham, the defendant, both signed and issued the draft or order attached to the information.)

HENRY H. ALVORD, on behalf of the prosecution.

I am a deputy marshal; was at Lake Superior in the fall of 1870—in October—I found the draft attached to the information in this case in circulation there at the time, and bought it; can't say from whom. I conversed with Mr. Isham about the paper at that time; he said he issued it; that he had taken counsel and intended to go right on issuing this kind of paper.

Cross-examination:

I am the informer against the mining companies for issuing this
29 kind of paper; I expect to receive the informer's share of whatever penalties are recovered against them; I don't think I have ever stated to receive from $20,000 to $50,000 for my share; I may have said I ought to recover that much, but never that I thought I should. Mr. Maynard has advised me that he should prosecute these cases just far enough to have the law settled, and then if the companies desired to compromise with the Department he should aid them in doing so.

WILLIAM ROLAND recalled by defendant.

When I stated in my former examination that I estimated that the Iron Cliffs Company issued from $15,000 to $20,000 monthly of their small drafts, I did not mean to be understood that the whole of this amount consisted of drafts issued for the first time. Probably not more than from $8,000 to $10,000 were original issues; I cannot tell exactly. The rest were drafts that had been issued before and received from merchants or banks for large drafts, or through the company's store, or drafts of other companies or currency.

30 And thereupon the following questions arose, concerning which the said defendant requested the court to instruct the jury in his favor, and for a verdict of acquittal:

First. Whether the instrument annexed to the information in this case and made a part of each count thereof, and introduced in evidence, is on its face subject to be stamped.

Second. Whether the evidence offered by the prosecution, tending to prove that Edwin B. Isham was superintendent of the Iron Cliffs Company, and drew the instrument in question in that capacity, or that Charles J. Canda was the treasurer of said company, and the instrument was drawn upon him in that capacity, or that said paper was drawn in the course of said company's business, was relevant and admissible.

Third. Whether if the paper in question was made and issued with the design that it should be used as a local circulating medium, and was actually used by the holders as such, it thereby became subject to be stamped, and whether the evidence given by the prosecution, tending to prove these facts, was relevant and admissible.

31 Fourth. Whether assuming every fact which the evidence in

support of the prosecution tends to prove, the defendant is guilty of the offence charged.

Fifth. Whether the information in this case sufficiently charges any offence under the laws of the United States.

And the following further question, upon which the district attorney requests the court to charge in favor of the prosecution:

Sixth. Whether if the instrument set forth in the information and adduced in evidence was issued with the design and intent to secure time for the payment of the debt it represents, it was therefore subject to stamp duty.

Upon which said questions the judges were divided in opinion.

Whereupon said questions are now, at this day, certified to the Supreme Court for its opinion thereon.

H. H. EMMONS,
Circuit Judge.
JNO. W. LONGYEAR,
District Judge.

32 Circuit court of the United States for the eastern district of Michigan.

THE UNITED STATES OF AMERICA
vs.
EDWIN B. ISHAM.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Addison Mundell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the above and foregoing is a true copy of the files, and in my office, in the above-entitled cause, to which is appended the original certificate of division of opinion, signed by the judges of said court.

In testimony whereof I have hereunto set my hand and the seal of said court, at Detroit, the twenty-fifth day of November, A. D. one thousand eight hundred and seventy-one.

[SEAL.] ADDISON MUNDELL, *Clerk.*

(Indorsement on cover:) No. 476. The United States, plaintiffs, vs. E. B. Isham. Certificate of division. E. Michigan C. C. U. S. Filed 5th December, 1871.

Supreme Court of the United States. The United States of America vs. Edwin B. Isham. Certificate of division of opinion of judges of the circuit court of the U. S. for the eastern district of Michigan.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES, *Plaintiffs,*
vs.
E. B. ISHAM. } No. 45.

On a certificate of division of opinion between the judges of the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES, *Plaintiffs*,
vs.
E. B. ISHAM. } No. 45.

On a certificate of division of opinion between the judges of the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR THE UNITED STATES.

This is a criminal information for issuing, without a stamp and with intent to evade the provisions of the act relating to internal revenue, a paper in the form of a draft drawn upon one Canda, treasurer of the *Iron Cliffs Company*, by the defendant as its superintendent. The paper is attached to and made part of the information, and is as follows:

5] IRON CLIFFS COMPANY, [Five.
1190.] *Negaunee, Mich., Jan. 3rd*, 1870.

Pay to the order of E. B. Isham, supt., or bearer,
FIVE DOLLARS,
Value received, and charge to account of
E. B. ISHAM.

To CHARLES J. CANDA, Esq., *New York*.
Countersigned:
E. S. GREEN, *Clerk*.

On the trial arose the questions stated below, upon which the judges were *divided*, and accordingly certified them to this court for its opinion:

"*First.* Whether the instrument annexed to the information in this case, and made a part of each count thereof, and introduced in evidence, is, on its face, subject to be stamped."

The above instrument, *on its face*, is one of a series, of at least eleven hundred and ninety numbers, ordering small sums of money to be paid to bearer, displaying conspicuously the name of a corporation and also the *official* designation of two persons who sign it as drawer and countersigner. By pursuing the *notice* which these features give to parties dealing in such paper, the latter would have found that they were issued in payment of debts for labor, &c, in the course of business of a large mining company at its place of business, and that the drawee was its treasurer.

The *face* of a paper includes both of these classes of information—the results of which *here* show that the instrument is one of a common class of corporation paper familiar to courts, and bearing a form appropriate for the enforcement of responsibility upon the financial agents of such persons.

The various classes of *negotiable paper* mentioned in schedule B of the internal revenue act (XIII Stat., p. 298) as requiring different grades of stamps, do not, as defined *in the books*, make a logical division of that subject. Some of them, to some extent, include others of them: *ex. gr.*, *promissory notes* are also *evidences of debt*, and *checks*, *orders*, and *drafts* belong to the general class of *bills of exchange*. Nevertheless, there are

characteristics so distinctive of some of these classes as to control any mere form in which they may appear; so that, although in form belonging to one class, if the instrument in question confers upon a party thereto a benefit peculiar to another class, it is to be assigned to the latter class, and not to the former.

There are sound legal reasons for the gradation of stamps in the schedule referred to. One principle upon which the tax is varied is,—according to the benefit which the relations constituted by one or other class of contracts confers upon the parties thereto. No matter what the form may be, if, in law, a particular benefit arises, the tax is according to that benefit, even where, together with that, there may be another benefit, of a lower class, assessed in the statute at a lower rate.

Instruments which assume the form of drafts, but which are drawn by a party *upon himself*, although loosely and for general purposes styled *drafts* or *checks*, are, in essence, *promissory notes*. The case is the same where the drawer and the drawee are apparently different persons, but in truth mere agents of one person known to all parties, and acknowledged as the only debtor in the transaction. In such cases the paper is *accepted* from its origin, and the *contingent liability of the drawer*, so characteristic of mere checks, never arises, being merged before issue *in the absolute liability of the same person*, as acceptor. That such instruments are promissory notes, was decided in England in the leading case of Miller *vs.* Thompson, 3 Man. & Gr., 576, and has been sustained in several cases in this country; notably by the high commercial

authority of the Court of Appeals of New York, in Fairchild *vs.* The Ogdensburgh R. R. Co., 15 N. Y. R., 337; see, also, in the State where this case arose, Hasey *vs.* The White Pigeon Co., 1 Doug., 193; besides, Byles on Bills, (late edition,) [90;] Parsons Mercantile Law, 63, and cases cited in the latter.

The inquiry in such cases seems to be, have the parties to the contract thereby placed themselves, *from its origin*, in a situation to *claim* the benefits of a promissory note? If they have, the stamp appropriate to such note must be affixed.

"*Second.* Whether the evidence offered by the prosecution, tending to prove that Edwin B. Isham was superintendent of the Iron Cliffs Company, and drew the instrument in question in that capacity, or that Charles J. Canda was the treasurer of said company, and the instrument was drawn upon him in that capacity, or that said paper was drawn in the course of said company's business was relevant and admissible."

In view of the character of the case before the court, this question is, Whether, *as against Isham*, there be such admissible and relevant evidence.

a. As to so much of the question as concerns Isham's official character, the answer does not seem difficult, for Roland, an officer of the company, testifies that Isham was its superintendent, and, besides, he is described as such upon the face of the paper in question, which he admits that he issued. (Record, p. 13.)

That he *acted in that character* in issuing the paper, is hardly less evident: for, in signing the name of "Isham," he knew that he was affecting the accounts of "Isham, Sup't.;" besides, the paper being payable

to the order of "Isham, Sup't.," he cannot avail himself of any inadvertence or design in omitting to affix his signature, as showing that he acted *unofficially*, especially in presence of the fact that he had done so frequently, for years together, and such signatures had been recognized by the company. It may be an independent view of this point to suggest that although the fact that paper payable (say) to "A B, Executor, &c., or bearer," is in circulation, is no evidence that it has ever been in the hands of "A B, Executor;" yet it would be otherwise if such paper were drawn by "A B" himself; also, as a variation of the same suggestion, that *here* "Isham, Sup't.," is to be taken to have *accepted* the draft immediately before, and as a substantial part of, the transaction of its *issue.*

In all these matters Isham was a principal actor, and we see no reason to question their *admissibility* in evidence against him.

b. Whether as against Isham there be any evidence admissible and relevant, that Canda was treasurer, and that the instrument was drawn upon him in that capacity?

Roland testifies that Canda was treasurer, and a vast number of warrants drawn upon him by the defendant year after year, for debts due by the company, were honored by the company, (pp. 4, 5, 8, &c.) At the same time, considerable quantities thereof were taken up by the defendant himself (p. 5) without having been presented to Canda, showing that it was *company paper.*

We are at a loss to conceive why the evidence upon this point is not relevant and admissible against the defendant.

c. Upon its being shown that paper of this sort, to the amount of about four hundred thousand dollars, and perhaps of several thousand distinct pieces, had, within four years of the issuing of this particular instrument, been issued in payment of debts by the company at its mine, and after circulating as money in its neighborhood and to its knowledge, had in the end been paid, there arises a very violent presumption that an instrument identical with the mass in all substantial qualities, and issued as they had been (p. 13,) was "drawn in the course of said company's business."

"*Third.* Whether if the paper in question was made and issued with the design that it should be used as a local circulating medium, and was actually used by the holders as such, it thereby became subject to be stamped, and whether the evidence given by the prosecution, tending to prove these facts, was relevant and admissible."

The instrument in question was issued January 3, 1870, after the defendant, as superintendent, had been dealing in like paper for two years. (P. 4.)

It has been shown that this instrument is of a class treated by the courts as promissory notes. Of all the expressions used in schedule B of the internal revenue act, it seems to us that a "memorandum of an amount of money to be paid on demand," might, in common language, be its most proper designation. Instruments by this name are subject to be stamped in the same way as promissory notes are. If they were used also as a

circulating medium, this would be no reason why they should not be stamped: rather the contrary.

That this particular paper was in circulation as money, was known so to be by the defendant, and was issued by him with the design that it should be so used,—appears from the probability (1) that it was no exception to the class to which it belonged, which was shown to have been used as a circulating medium; (pp. 4, 5, and 7;) also (2) that the defendant, as a leading business man, was not ignorant of such a fact generally known in his vicinity; and (3) that upon issuing such an instrument, after he knew of their being used as a circulating medium, and had treated them as such, he must have meant that this particular one should be so treated. For two years he had frequently *issued* such paper; had frequently *reissued* it; and had frequently *deposited it* in banks with money as cash; (p. 4.) Upon his issuing an instrument of the same general kind at the end of two years' practice, his intent that it should answer all the purposes of its class, will be assumed, by the same sort of conclusion which ascribes to him an intent therein to evade the act in relation to internal revenue.

"*Fourth.* Whether assuming every fact which the evidence in support of the prosecution tends to prove, the defendant is guilty of the offence charged."

We submit the arguments already made upon the preceding questions, as warranting us in suggesting an affirmative answer to this question.

"*Fifth.* Whether the information in this case sufficiently charges any offence under the laws of the United States."

By the first and third counts of the information, it is charged that, the defendant, "superintendent of the Iron Cliffs Company, as such superintendent, did make, sign, and issue, a certain [in first count] *written and printed evidence of an amount of money to be paid on demand, which was in the form of a draft*," or [in third count] "*a written instrument in the form of a draft*, drawn upon Charles J. Canda, treasurer of said company, requesting him, said Canda, to pay to the order of said Isham, or bearer, a sum of money on demand, which said draft is hereto attached, and forms part of this information, upon which a tax is imposed by law," without stamping it, and with intent to evade the statute, &c.

The second count varies from the first, and the third varies from the fourth, only by alleging that the defendant *signed*, instead of *did make, sign, and issue*, &c.

We submit that the court will find upon the face of these counts a valid charge of such a making, &c., of a promissory note, as renders the party charged liable to the penalty of the internal revenue act of 1864, section 158, (13 Stat., 293.)

"*Sixth.* Whether if the instrument set forth in the information and adduced in evidence was issued with the design and intent to secure time for the payment of the debt it represents, it was therefore subject to stamp duty."

In reference to this question we submit what has already been said in relation to the others.

In general, we submit that the questions upon which the division was certified, should be answered affirmatively.

GEO. H. WILLIAMS,
Attorney General.
S. F. PHILLIPS,
Solicitor General.

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13 St - p 293
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